

THE ABBOTT BANK,	:	Order Vacating Decision and
Appellant	:	Remanding Case
	:	
v.	:	
	:	Docket No. IBIA 92-195-A
ABERDEEN AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	March 22, 1993

This is an appeal from a June 3, 1992, decision of the Aberdeen Area Director, Bureau of Indian Affairs, denying an application for a loan guaranty in the amount of \$2.8 million. The loan applicants were Kaye E. Buckles, Ruth M. Holthus, and Maria A. Buckles (applicants), who sought funds for the purpose of building a motel in Alliance, Nebraska. Applicants are members of the Oglala Sioux Tribe.

The Area Director's decision stated:

This decision is based on Title 25, CFR Part 103.2(a), which states the BIA Loan Guaranty Program should be utilized " . . . for financing economic enterprises which contribute beneficially to the economy of an Indian reservation." We have determined your application would obligate excessive funds from our limited loan guaranty resources in comparison to the potential reservation economic impact created by the proposed business. In addition, we find the equity contribution insufficient to meet our requirements.

While the appeal was pending, applicants informed the Board that they had acquired \$300,000 in additional equity, for a total of \$750,000. Further, in their statement of reasons, they discussed at length the question of economic impact on the Pine Ridge Reservation. The Area Director did not file a response to their statement of reasons.

In order to give the Area Director an opportunity to consider the new information supplied by applicants, the Board issued an order of limited remand, but retained jurisdiction over the appeal. The Area Director was requested to determine whether, in light of the additional equity and the additional arguments concerning reservation impact, he would now grant or deny the application. The Board stated that, if the Area Director again denied the application, he was to discuss the reasons for denial in his decision.

The Area Director issued a new decision on March 5, 1993. The decision states:

We have not been provided with sufficient documented evidence that would change our previous decision in this case. We maintain the position that the business will not sufficiently impact the reservation economy as required by Regulation.

Our concerns about equity injection may be satisfied based on the additional \$300,000 available from investors. Please be advised that the equity must be in the form of cash or unencumbered assets used directly in the business, also per Regulations.

We are attaching a copy of all additional information provided by loan applicants for your convenience.

The documents attached to the Area Director's decision included an updated economic impact statement prepared by applicants, apparently in February 1993.

Neither the Area Director's original decision nor his new decision discusses the issue of reservation economic impact or analyzes any of the information submitted by applicants on this issue. The administrative record similarly lacks any analysis of the loan guaranty application with respect to this issue.

A BIA decision to grant or deny a loan guaranty is based on the exercise of discretion. Where a BIA decision is so based, the Board does not substitute its judgment for BIA's. Navajo Precision Built Systems, Inc. v. Acting Navajo Area Director, 22 IBIA 153 (1992). However, even in the case of a discretionary decision, the Board requires that the BIA decisionmaker explain the reason for his/her decision. E.g., Quileute Tribe v. Portland Area Director, 23 IBIA 20 (1992). See Bowen v. American Hospital Association, 476 U.S. 610, 626-627 (1986) (“[A]n agency’s explanation of the basis for its decision must include ‘rational connection between the facts found and the choice made’”; an agency has a responsibility “to explain the rationale and factual basis for its decision, even though we (the court) show respect for the agency’s judgment in both”).

Especially in light of the substantial amount of information submitted by applicants on the matter of reservation economic impact, the Area Director's bald conclusion on this point is not sufficient to comply with this standard.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's June 3, 1992, and March 5, 1993, decisions are vacated, and this matter is

remanded to him for further consideration in accordance with this opinion. If the Area Director again concludes that applicants' project will have insufficient economic impact on a reservation, he must give reasons for that conclusion. 1/

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge

1/ The Area Director is referred to the Board's decision in Navajo Precision Built Systems, Inc., supra, for an example of a more thorough BIA analysis of the issue of reservation economic impact.